No. 91-1353

# In the Supreme Court of the United States

OCTOBER TERM, 1992

THOMAS F. CONROY, PETITIONER

*v.*

WALTER S. ANISKOFF, JR., ET AL.

*ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MAINE*

## BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

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## QUESTION PRESENTED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525, excludes a service member's period of military service after October 6, 1942, from the computation of "any period * * * provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." The question presented is whether a service member may invoke the protections of Section 525 without showing that his military service prejudiced his ability to redeem his property within the period otherwise prescribed by state law.

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### INTEREST OF THE UNITED STATES

The state court in this case held that, absent a showing of prejudice, members of the United States Armed Services may not invoke Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), 50 U.S.C. App. 525, which in relevant part tolls the period of redemption for real property sold or forfeited for nonpayment of taxes. The United States has a substantial interest in assuring that those who serve the Nation in the military services receive the full measure of protection from civil process that Congress has provided by law. At the Court's invitation, the United States filed a brief amicus curiae at the petition stage of this case.

## STATUTORY PROVISION INVOLVED

Section 205 of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. 525, provides as follows:

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.[1]

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[1] On March 18, 1991, Congress amended 50 U.S.C. App. 525 to replace a reference to "the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942" with the present reference to "October 6, 1942." Soldiers' and Sailors' Civil Relief Act Amendments of 1991, Pub. L. No. 102-12, § 9(6), 105 Stat. 39. That technical amendment does not affect the question presented in this case. Several other provisions of the SSCRA were also amended in 1991 in respects not material here. For purposes of convenience, we refer to the presently effective version of the SSCRA, to be codified in 50 U.S.C. App. Parallel citations to the statutes at large are listed in the Table of Authorities to this brief for the provisions amended in 1991.



## STATEMENT

1. Petitioner, a Colonel in the United States Army, has been on continuous active duty with the Army since November 26, 1966. During that time, he has been stationed in four foreign countries and several duty stations in the United States. While stationed in Massachusetts in 1973, petitioner purchased some real estate in Danforth, Maine. Petitioner paid all local real estate taxes on the property until 1984, but he did not do so in 1984, 1985, or 1986.[2] Although the town sent petitioner tax notices. they were returned as "undeliverable as addressed and unable to forward." Pet. App. 24-28.

By operation of Maine law, a lien against real estate arises to secure the payment of taxes legally assessed against the property. Me. Rev. Stat. Ann. tit. 36, § 552 (West 1990). After a specified period, the tax collector may send the taxpayer a notice of lien and a demand for payment. Me. Rev. Stat. Ann. tit. 36, § 942 (West 1990). If taxes remain unpaid after an additional 30 days, the tax collector records a "tax lien certificate" in the county registry of deeds. *Ibid.* Recordation of the certificate creates a tax lien mortgage, and the taxpayer has an 18-month period of redemption in which to pay the mortgage, plus interest and costs. Me. Rev. Stat. tit. 36, § 943 (West 1990). If the taxpayer does not do so within the prescribed period, the mortgage is deemed foreclosed after notice to the taxpayer. *Ibid.*

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[2] Petitioner testified that he never received tax bills for those years, that he sent the municipality correspondence in 1985 concerning his 1984 and 1985 bills, and that he ceased to pursue the matter when he received no response before he moved overseas the next year. Pet. App. 26-27.

Here, the town sent petitioner notices of the tax liens and of the impending foreclosure of those liens, but the notices were returned as undeliverable. After the automatic foreclosure, the town sold petitioners' properties to respondents Walter S. Aniskoff, Jr., and H.C. Haynes, Inc., in December 1986. Pet. App. 27-28.

2. Petitioner brought this quiet title action against the town and the two purchasers in the Maine Superior Court. At trial, the parties stipulated:

> [A]ll statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this particular instance, including notice and recording requirements; and * * * were it not for the Soldiers and Sailors Civil Relief Act [*sic*], the Town title would have been perfected in this particular instance.

Pet. App. 28-29. Noting that 50 U.S.C. App. 525 tolls statutory redemption periods for any "period of military service," petitioner argued that the town did not acquire valid title to his property because he had been in military service throughout the relevant period. The superior court rejected that contention. Pet. App. 29-41.

The trial court acknowledged decisions holding that under 50 U.S.C. App. 525 any period of military service tolls any period of limitations and explained that those decisions were based on the principle that a court should apply the plain meaning of a clearly worded statute. Pet. App. 32-33. The court, however, also noted that some courts had concluded that a career service member may invoke Section 525 only if he can show that his military service resulted in hardship excusing timely legal action. Pet. App. 33-34.



Those courts, the court observed, had rejected the contrary rule—requiring no showing of hardship by career service members—as "absurd and illogical." *Id.* at 34.

The superior court followed the line of cases requiring a showing of hardship. The court found reading such a requirement into the statute necessary "to avoid absurd, unreasonable or illogical results." Pet. App. 36. If a career officer did not have to demonstrate prejudice, the court reasoned, he could purchase real estate, ignore his tax obligations for a lengthy period, and reclaim the property at the end of his military service. *Id.* at 37-39. Finding that petitioner was a career service member who had not alleged any hardship, the court denied him relief under Section 525. Pet. App. 40.

3. The Maine Supreme Judicial Court affirmed by an evenly divided court. Pet. App. 42-45.

## SUMMARY OF ARGUMENT

The state courts' decision requiring a career service member to show hardship before invoking the redemption provision of 50 U.S.C. App. 525 is contrary to the unambiguous language of the statute. Section 525 unequivocally provides that "any part of [a] period [of military service] which occurs after October 6, 1942," is to be excluded from "any period * * * provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." It draws no distinction between career and noncareer service members, and imposes no requirement that a service member show service-related hardship. Because numerous other provisions of the SSCRA explicitly require a showing of service-

related hardship as a condition of relief, the omission of any such requirement from Section 525 must be regarded as deliberate.

Despite the clarity of the SSCRA's language, the state court imposed a hardship requirement under Section 525, in part because service members may otherwise decline to pay property taxes during their entire military service and then redeem their property at the conclusion of their service. The court's reasoning, however, not only conflicts with this Court's decision in *King* v. *St. Vincent's Hosp.*, 112 S. Ct. 570 (1991), but disregards the plain terms of an Act of Congress based on the speculative concern that some of its beneficiaries will abuse the rights Congress has afforded them. Finally, although some lower courts have discerned support in the SSCRA's legislative history for the view that prejudice is required under Section 525, see, *e.g.*, *Bailey* v. *Barranca*, 488 P.2d 725, 727-729 (N.M. 1971); *King* v. *Zagorski*, 207 So. 2d 61, 66 (Fla. Dist. Ct. App. 1968), the unambiguous text of Section 525 renders legislative history irrelevant. See, *e.g.*, *Davis* v. *Michigan Dep't of the Treasury*, 489 U.S. 803, 808-809 n.3 (1989). In any case, the Act's legislative history does not contradict the statute's plain terms.



## ARGUMENT

### THE PLAIN LANGUAGE OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 UNQUALIFIEDLY TOLLS THE PERIOD FOR REDEEMING REAL PROPERTY SOLD OR FORFEITED FOR UNPAID TAXES DURING THE PERIOD OF MILITARY SERVICE AND CONTAINS NO REQUIREMENT THAT A SERVICE MEMBER DEMONSTRATE HARDSHIP ARISING FROM THAT SERVICE

Congress enacted the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), ch. 888, § 100, 54 Stat. 1179, "to provide for, strengthen, and expedite the national defense" and "to enable the United States the more successfully to fulfill the requirements of the national defense." 50 U.S.C. App. 510.[3] The SSCRA achieves its objective by "suspend[ing] enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation." *Ibid.* Although the immediate rationale for enacting the SSCRA in 1940 was to address "the emergent conditions which [were] threatening the peace and security of the United States," *ibid.*, and the Act was originally intended to be of limited duration, SSCRA, § 604, 54 Stat. 1191, Congress later extended its protections indefinitely. Selective Service Act of 1948, ch. 625, § 14, 62 Stat. 623-624.

The provision at issue here, 50 U.S.C. App. 525, tolls periods of limitations and redemption during a service member's military service. The broad and un-

[3] The 1940 legislation is a "substantial reenactment," *Boone* v. *Lightner*, 319 U.S. 561, 565 (1943), of a similar statute adopted during World War I, see Soldiers' and Sailors' Civil Relief Act of 1918, ch. 20, 40 Stat. 440.

conditional language of Section 525 mandates that "[t]he period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service." 50 U.S.C. App. 525. Of specific pertinence here, Section 525 also provides: "[N]or shall any part of such period which occurs after October 6, 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." *Ibid.*[4]

The SSCRA, moreover, explicitly defines both the type and the duration of military service that qualifies for protection. The category of "person[s] in the military service" encompasses "[a]ll members of the Army of the United States, the United States Navy, the Marine Corps, the Air Force, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy." 50 U.S.C. App. 511(1). And the statute defines "period of military service" to "mean[], in the case of any person, the period beginning on the date on which the person enters active service and

[4] The portion of Section 525 pertaining to redemption periods was enacted in 1942. See Soldiers' and Sailors' Civil Relief Act Amendments of 1942, ch. 581, § 5, 56 Stat. 770-771. In *Ebert* v. *Poston*, 266 U.S. 548, 553 (1925), this Court had held that an analogous tolling provision in the previous SSCRA did not apply to rights of redemption, and Congress amended the 1940 statute to overcome the effect of that interpretation. See H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942); S. Rep. No. 1558, 77th Cong., 2d Sess. 3 (1942).



ending on the date of the person's release from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force." 50 U.S.C. App. 511(2).[5] Thus, the Act specifies with precision the coverage and duration of the tolling provisions codified at Section 525.

### A. The Tolling Provisions of 50 U.S.C. App. 525 Operate Exclusively by Reference to the "Period of Military Service"

As this Court has often stated, "[i]nterpretation of a statute must begin with the statute's language." *Mallard* v. *United States Dist. Court*, 490 U.S. 296, 300 (1989); see, *e.g.*, *Hallstrom* v. *Tillamook County*, 493 U.S. 20, 25 (1989); *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). And where "the statute's language is plain,

[5] Prior to the 1991 amendments to the SSCRA, the statute provided:

> The term "period of military service", as used in this Act [said sections], shall include the time between the following dates: For persons in active service at the date of the approval of this Act [Oct. 17, 1940] it shall begin with the date of approval of this Act [Oct. 17, 1940]; for persons entering active service after the date of this Act [Oct. 17, 1940], with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force.

50 U.S.C. App. 511(2) (1988). Because petitioner entered active service well after the approval of the SSCRA, the omission of the transitional provisions relating to the 1940 enactment of the SSCRA has no effect on this lawsuit. For simplicity, we refer to the presently effective version of Section 511(2).

'the sole function of the courts is to enforce it according to its terms.'" *United States* v. *Ron Pair Enter., Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917)); accord *Connecticut Nat'l Bank* v. *Germain*, 112 S. Ct. 1146, 1149 (1992) ("We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. * * * When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'"). The plain language of Section 525 requires no showing of prejudice or hardship by any service member. Rather, it flatly excludes "any part of [the] period [of military service] which occurs after October 6, 1942," from "any period" provided for the redemption of real estate sold or forfeited to pay property taxes. Thus, under the clear terms of Section 525, "[t]he only critical factor is military service; once that circumstance is shown, the period of limitations is automatically tolled for the duration of the service." *Ricard* v. *Birch*, 529 F.2d 214, 217 (4th Cir. 1975); accord *Bickford* v. *United States*, 656 F.2d 636, 639 (Ct. Cl. 1981).[6]

### 1. *50 U.S.C. App. 525 Draws No Distinction Between Career and Noncareer Service Members*

The state court held that petitioner was required to make a showing of hardship before invoking Section 525, because he is "a career military serviceman." Pet. App. 40. The SSCRA, however, "draws no distinction" among "different categories of active duty personnel." *Bickford*, 656 F.2d at 639. Rather, Section 525 on its face applies equally to "*any* person in military service," a category into which Section 511(1) places "[*a*]*ll* members" of the Armed Forces, regardless of whether they intend to make a career of military service (emphasis added). Indeed, far from defining distinct categories of service members, the SSCRA does not remotely suggest any criteria for deciding who would be a career, rather than noncareer, service member for purposes of Section 525. It is unlikely that Congress, in enacting so detailed a statute, would have created two wholly unmentioned classes of service members eligible for distinct tolling rights without specifying, or even suggesting, any basis for identifying the members of each category.

Some courts have cited length of service as a factor to consider in determining a service member's "career" status. See, *e.g.*, *Pannell* v. *Continental Can Co.*, 554 F.2d 216, 224-225 (5th Cir. 1977) (31 years); *King* v. *Zagorski*, 207 So. 2d 61, 62, 64 (Fla. Dist. Ct. App. 1968) (20 years). None of those cases, however, has cited any provision of the SSCRA that indicates how or where to draw the line between "career" and "noncareer" service members based on the length of their service. Rather, in the absence of any statutory guidance, courts making such determinations are able to consult only their own impressionistic judgment that a particular member's service has been, or is likely to be, of sufficient duration to qualify him as a "career" service member. Such ad hoc determinations are hardly consistent with the broad and carefully drawn statutory language that applies Sec-

[6] Although *Ricard* and *Bickford* involved periods of limitation, and not periods of redemption, their reasoning applies with no less force to the part of Section 525 dealing with redemption. Section 525 generally excludes "[t]he period of military service" from any limitations period, but also excludes "any part of such period [of military service] which occurs after October 6, 1942," from periods of redemption.

tion 525 without qualification to "any person in military service."

Nor is it tenable to suggest, as some courts have, see, *e.g.*, *Pannell*, 554 F.2d at 225; *Bailey* v. *Barranca*, 488 P.2d 725, 727-729 (N.M. 1971), that Section 525's availability turns on the member's status as a conscript, rather than a volunteer. To be sure, the SSCRA was enacted in 1940 to deal with the "emergent conditions which [were] threatening the peace and security of the United States," and Congress contemplated that it would be of limited duration. SSCRA, §§ 100, 605, 54 Stat. 1179, 1191. But the language of the SSCRA does not differentiate between conscripts and volunteers. Moreover, Congress's reenactment of the SSCRA in 1940 occurred soon after it enacted the Selective Training and Service Act of 1940, ch. 720, § 13, 54 Stat. 895-896, which extended certain provisions of the World War I version of the SSCRA to persons inducted through the selective service. Part of the impetus for enacting the SSCRA in 1940 was to extend civil relief to military volunteers, S. Rep. No. 2109, 76th Cong., 3d Sess. 1 (1940); see also H.R. Rep. No. 3001, 76th Cong., 3d Sess. 4 (1940), and it was broadly worded to cover "[a]ll members" of the Armed Forces.[7] SSCRA, § 101(1), 54 Stat. 1179. Given Congress's evident purpose of extending civil relief to military volunteers, it should not lightly be inferred that Congress silently chose to extend less protection to volun-

[7] Because of the comprehensive coverage of the SSCRA of 1940, it became unnecessary to retain the civil relief provision of the Selective Training and Service Act of 1940; thus, Congress made that provision inapplicable to military service occurring after the effective date of the SSCRA. See SSCRA, § 605, 54 Stat. 1191.



teers than to conscripts without expressing any intent to do so in the text of the SSCRA (or even in its legislative history).

In any case, while Congress initially contemplated that the SSCRA would be a wartime measure, it subsequently extended the Act's duration indefinitely. See Selective Service Act of 1948, § 14, 62 Stat. 623-624.[8] It is therefore now unmistakably clear that the Act's protections are fully intended for service members who serve the Nation other than in periods of emergency or war. And given the present all-volunteer character of the Armed Forces, a statutory distinction turning on conscription, as opposed to voluntary enlistment, is meaningless. In particular, there is no reason to think that Congress, which has traditionally sought to attract volunteers and to encourage reenlistments,[9] meant to treat either of those

[8] Under Section 604 of the SSCRA (54 Stat. 1191) the Act was to remain in effect either until May 15, 1945, or until the war was "terminated by a treaty of peace proclaimed by the President and for six months thereafter." In a joint resolution passed in 1947, Congress declared that with respect to the provisions of the SSCRA pertaining to insurance (50 U.S.C. App. 540-548), "the present war shall be deemed to have terminated within the meaning of section 604 * * * of the [SSCRA], as of the effective date of this joint resolution." Act of July 25, 1947, ch. 327, § 4, 61 Stat. 454. The next year, however, Congress provided in Section 14 of the Selective Service Act of 1948 (62 Stat. 623) that notwithstanding the provisions of Section 604 of the SSCRA or Section 4 of the 1947 joint resolution, "all of the provisions of the [SSCRA] of 1940, as amended, * * * shall be applicable to all persons in the armed forces of the United States * * * until such time as the [SSCRA] of 1940, as amended, is repealed or otherwise terminated by subsequent Act of the Congress."

[9] For examples of statutes authorizing payment of enlistment or reenlistment bonuses, see, *e.g.*, Act of Mar. 3, 1791,

categories of service members less favorably than others under Section 525.

### 2. *The Plain Language and Structure of the SSCRA Make Clear That a Showing of Prejudice Is Not Required Under Section 525*

Contrary to the decision of the state court, the language and structure of the SSCRA leave no doubt that a service member may invoke the protections of 50 U.S.C. App. 525, without showing any hardship arising from his military service. Not only does Section 525 unconditionally exclude "any part of [the] period [of military service] which occurs after October 6, 1942," from "any period" of redemption,[10] but it stands in marked contrast to other provisions of the Act that expressly condition available relief on prejudice arising from military service. For example, a court may stay "any action or proceeding in any court in which a person in military service is involved,

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ch. 28, § 4, 1 Stat. 222; Act of Mar. 3, 1795, ch. 44, § 6, 1 Stat. 430; Act of July 5, 1838, ch. 162, § 29, 5 Stat. 260; Act of Mar. 3, 1899, ch. 413, § 16, 30 Stat. 1008; National Defense Act Amendments of 1920, ch. 227, § 27, 41 Stat. 775; Act of June 10, 1922, ch. 212, §§ 9-10, 42 Stat. 629-630; Pay Readjustment Act of 1942, ch. 413, § 10, 56 Stat. 364; National Defense Authorization Act for Fiscal Years 1988 and 1989, Pub. L. No. 100-180, § 626, 101 Stat. 1104 (1987) (extending authorization for certain bonuses). In addition, Congress provides educational assistance based upon military service, in part, as a means of making such service more attractive. See, *e.g.*, 38 U.S.C. 1401(4), 1601.

[10] See, *e.g.*, *Mason* v. *Texaco Inc.*, 862 F.2d 242, 245 (10th Cir. 1988) (Section 525's terms are "clear and unambiguous"); *Bickford*, 656 F.2d at 639 (statute's "express terms" make tolling "unconditional"); *Ricard*, 529 F.2d at 217 (tolling statute is "unconditional").



either as plaintiff or defendant, * * * as provided in this Act * * * unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service." 50 U.S.C. App. 521. A similar qualification appears in many other provisions of the SSCRA relating to diverse forms of civil relief.[11] The absence of any similar

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[11] See 50 U.S.C. App. 520(4) (court may reopen judgment entered against absent service member if "it appears that such person was prejudiced by reason of his military service in making his defense thereto"); 50 U.S.C. App. 523 (court may enter stay of judgment, attachment, or garnishment against service member, "unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service"); 50 U.S.C. App. 526 (limiting interest rate on obligations incurred before entry into military service unless service member's ability to pay "is not materially affected by reason of such service"); 50 U.S.C. App. 530(b) (allowing stay of eviction or distress proceedings against military dependents unless tenant's ability to pay rent "is not materially affected by reason of such military service"); 50 U.S.C. App. 531(3) (allowing stay of proceedings to terminate installment contract unless "the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service"); 50 U.S.C. App. 532(2) (stay of enforcement of secured obligations, unless "the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service"); 50 U.S.C. App. 535(1) (limiting right of assignee of insurance policy to exercise any right or option under the policy, unless "the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service"); 50 U.S.C. App. 535(2) (limiting right to foreclose or enforce lien for storage of personal property unless "the ability of the defendant to pay

qualification upon the tolling of redemption under Section 525 indicates that Congress did not intend to qualify the availability of that relief. See *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."); see also *Bickford*, 656 F.2d at 639-640 ("When Congress intended to impose conditions on the applicability of other provisions in the SSCRA * * *, it did so in clear terms. Section 525, in marked contrast, in no way suggests that a serviceman must demonstrate that his military service has affected his ability to bring suit as a condition precedent to its applicability.").

Other parts of the Act confirm that conclusion. The SSCRA deals directly with the collection of unpaid taxes and assessments on "real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his depend-

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the storage charges due is not materially affected by reason of his military service").

In addition, the National Labor Relations Act establishes a six-month limitations period for filing an unfair labor practice charge, unless the aggrieved person "was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge." 29 U.S.C. 160(b). That provision confirms that when Congress intends to toll a statute of limitations based on the prejudicial effect of military service on a service member's ability to bring an action, it does so explicitly.



ents or employees." 50 U.S.C. App. 560(1).[12] The Act provides that such property may not be sold to collect unpaid taxes or assessments except by leave of court, and that collection proceedings may be stayed until six months after the termination of military service—"unless * * * the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service." 50 U.S.C. App. 560(2). When such property is sold for back taxes or assessments, however, the SSCRA provides, without qualification, that a service member "shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of [military] service." 50 U.S.C. App. 560(3). Thus, two provisions appearing side-by-side in Section 560 of the SSCRA differ as to whether prejudice is required; the subsection dealing with collection proceedings requires consideration of prejudice while the adjacent subsection dealing with the right of redemption pointedly omits such a requirement. This is powerful confirmation that Congress intended to make the right of redemption unqualified in the SSCRA.

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[12] The state court did not consider, and petitioner does not rely on, that provision in this case. Petitioner does not suggest that he or his dependents ever used the property in question for "dwelling, professional, business, or agricultural purposes," as required by Section 560. As this Court has noted, however, the fact that property is not within the ambit of Section 560 does not affect the applicability of Section 525. *Le Maistre* v. *Leffers*, 333 U.S. 1, 5 (1948). The two provisions supplement each other; Section 560 provides protections relating to both forced sale and redemption of the specified kinds of property, whereas Section 525 applies generally to all property but protects only against the expiration of the right of redemption. 333 U.S. at 5-6.

In addition, the inference that Congress purposefully omitted a prejudice requirement from the redemption provision is generally reinforced by the carefully detailed nature of the SSCRA's remedial scheme. As this Court stated regarding the substantially similar World War I version of the SSCRA:

> This Act is so carefully drawn as to leave little room for conjecture. It deals with a single subject and does so comprehensively, systematically, and in detail. * * * To ensure certainty, separate provision is made for each of the several classes of transactions to be dealt with and for the situations likely to arise in each. * * * Such care and particularity in treatment preclude expansion of the Act in order to include transactions supposed to be within its spirit, but which do not fall within any of its provisions.

*Ebert* v. *Poston*, 266 U.S. 548, 554 (1925). Although the Court made that observation in rejecting a remedy found nowhere in the text of the statute,[13] there is no reason to conclude that the "care and particularity" with which the SSCRA is drawn leaves any greater room for implying restrictions on relief that are nowhere in the statutory text.

Indeed, there is even less basis for implying nonstatutory restrictions on relief, because the SSCRA must be liberally construed in favor of service members. See *Le Maistre* v. *Leffers*, 333 U.S. 1, 6 (1948). In *Le Maistre*, this Court rejected a "technical reading" of Section 525 that would have limited the tolling

[13] The Court declined to authorize relief for a service member whose mortgage had been foreclosed prior to the enactment of the SSCRA in 1918, when neither the foreclosure stay provision nor the tolling provision (as then drafted) provided for the requested relief. 266 U.S. at 552-555.



of periods of redemption to cases in which a purchaser obtained title to forfeited land prior to the period of redemption. 333 U.S. at 4. The Court reasoned that Section 525's language "does not compel the narrow reading that is suggested," and that "the spirit of the amendment [covering redemption periods] repels any such restriction." 333 U.S. at 4. The Court added that "the Act must be read with an eye friendly to those who [have] dropped their affairs to answer their country's call." *Id.* at 6. Thus, even if the SSCRA were unclear regarding a requirement of prejudice under Section 525, any ambiguity would have to be resolved in favor of the service member. See *King* v. *St. Vincent's Hosp.*, 112 S. Ct. 570, 574 n.9 (1991) (reaffirming interpretive "canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor").[14]

[14] The state court in this case suggested that the pertinent canon applies only when an individual is called to temporary service during time of war, see Pet. App. 36, but *King* applied it in the case of a National Guard member who voluntarily assumed a three-year tour of active duty in peace time. 112 S. Ct. at 571-572. Although *King* arose under the Veterans' Reemployment Rights Act (VRRA), 38 U.S.C. 2021 *et seq.*, it articulated the canon in general terms not limited to that particular statute. Moreover, the decision upon which *King* relied (112 S. Ct. 574 n.9) in applying the canon, *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) (construing VRRA's predecessor statute), relied in turn upon *Boone* v. *Lightner*, 319 U.S. 561, 575 (1943), a case arising under the SSCRA.

### B. The State Court Erred in Imposing a Service-Connected Hardship Requirement under Section 525 to Avoid "Absurd, Unreasonable, or Illogical" Results

Even though Section 525's plain language requires no showing of prejudice, and the structure of the SSCRA confirms that Congress acted deliberately in omitting such a requirement, the state court in this case concluded that a requirement of prejudice for a career service member seeking to toll a period of redemption is necessary to avoid "absurd, unreasonable, or illogical results." Pet. App. 36. In so holding, the court relied (Pet. App. 36-39) on lower court decisions holding that Congress could not have intended the practical consequences of a contrary rule—namely, that a career service member could sow uncertainty in land titles by not paying real estate taxes, while retaining an unqualified right of redemption, during the entire period of his military service. See *Bailey* v. *Barranca*, 488 P.2d 725, 729-730 (N.M. 1971); *King* v. *Zagorski*, 207 So. 2d 61, 67 (Fla. Dist. Ct. App. 1968).[15] But that policy-based argument cannot legitimately override the plain meaning of the statute.

Indeed, the reasoning of *Bailey* and *Zagorski* directly conflicts with that of this Court's recent decision in *King* v. *St. Vincent's Hosp.*, *supra*. At issue

[15] The state court also quoted (Pet. App. 39-40) *McCance* v. *Lindau*, 492 A.2d 1352, 1357 (Md. Ct. Spec. App. 1985), for its assertion "that absurd results may ensue" from a literal application of Section 525, because "a career military serviceman could for any reason or no reason at all wait 30 years or more before filing a law suit." *McCance*, however, recognized that any such uncertainty "was placed there by Congress," and that "it is for Congress" to remove it. 492 A.2d at 1357.



there was a provision of the Veterans' Reemployment Rights Act (VRRA), 38 U.S.C. 2024(d), requiring employers to give reservists "a leave of absence" for training, and assuring the returning employee "such seniority, status, pay, and vacation" as he would have had without the absence. The service member in *King* sought a three-year leave of absence, but his employer rejected it. Although the plain language of Section 2024(d) was unqualified in granting a right of leave, the court of appeals read a reasonableness requirement into the statute's guarantee of leave time; to do otherwise, the court of appeals concluded, would cause "absurd, unjust, or unintended" results. *St. Vincent's Hosp.* v. *King*, 901 F.2d 1068, 1071-1072 (11th Cir. 1990).

This Court reversed, reasoning that the language of Section 2024(d) is "unequivocal and unqualified" and "does not address the 'reasonableness' of a reservist's leave request." *King*, 112 S. Ct. at 573. Although acknowledging the force of the argument that a literal reading of Section 2024(d) would create serious practical difficulties, the Court determined that "to grant all this is not to find equivocation in the statute's silence, so as to render it susceptible to interpretive choice." 112 S. Ct. at 573. In particular, the Court observed that, unlike Section 2024(d), certain other provisions of the VRRA "expressly limit" the duration of reemployment rights. 112 S. Ct. at 573. In view of "the examples of affirmative limitations on reemployment benefits conferred by neighboring provisions," the Court inferred that "the simplicity of subsection (d) was deliberate, consistent with a plain meaning to provide its benefit without conditions on length of service." 112 S. Ct. at 574. Finally, the Court stated that even if there were am-

biguity in the statute, it would have to be resolved in favor of the service member "under the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *Id.* at 574 n.9.

The same analysis applies with remarkable similarity to the redemption provision of Section 525. The language of that provision is "unequivocal and unambiguous"; it contains no requirement of prejudice; it is surrounded by other sections of the SSCRA that "expressly limit" available civil relief with "affirmative" requirements of prejudice; and it arises in the context of a statute that must be liberally construed in favor of the service member. Whatever policy concerns may arise from an unqualified tolling of the period of redemption during the period of military service, the courts "must deal with the law as it is." *Monroe* v. *Standard Oil Co.*, 452 U.S. 549, 565 (1981).[16] By adding a requirement of prejudice to Section 525, the state court restruck the statutory balance in a manner inconsistent with the plain language selected by Congress in the SSCRA.

In any case, we disagree with the suggestion of *Bailey* and *Zagorski* that adhering to the plain language of the SSCRA presents a material risk that career service members will abuse Section 525. Nothing in the SSCRA prohibits state or local governments from charging service members interest on back taxes, and the continued nonpayment of taxes therefore carries a clear economic cost. To be sure, the

[16] This is especially so, moreover, under a statute governing the Nation's military affairs. Cf. *Rostker* v. *Goldberg*, 453 U.S. 57, 64-66 (1981) (noting the great deference owed to Congress in matters of national defense and military affairs).



SSCRA limits the rate of interest that may be charged on unpaid taxes or assessments on specified types of property,[17] making it theoretically possible for a service member to invest sums withheld from property taxes at a higher rate of interest than he is charged on his back taxes. In practice, however, such a course of deliberate tax delinquency is unlikely, because it would carry with it the considerable cost of harming the service member's credit rating generally (and the taxability of interest income would mitigate any advantage). Thus, even if there could be a proper basis for departing from Section 525's plain terms on policy grounds, but see *King* v. *St. Vincent's Hosp.*, *supra*, the speculative possibility that some service members might abuse the tolling provisions of Section 525 would not provide a sufficient reason to do so.[18]

[17] Where unpaid taxes or assessments arise from "personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes," 50 U.S.C. App. 560(1), the Act provides that the amount due "shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment." 50 U.S.C. App. 560(4). In general, moreover, for liabilities incurred prior to a service member's military service, the SSCRA limits interest to six percent unless a court finds, upon application of the obligee, that the member's ability to pay a higher rate is "not materially affected" by his military service. 50 U.S.C. App. 526. Those limitations do not apply in this case. Petitioner has not suggested that the property at issue falls within any of the categories covered by Section 560. See note 12, *supra*. Section 526 also is inapposite, because petitioner entered military service in 1966—well before he incurred the relevant tax liability during the 1980s. See Pet. App. 25-27.

[18] We note, moreover, that uncertainty in real estate titles is inevitable with respect to any provision that tolls periods of

### C. The Legislative History Does Not Contradict the Plain Language of Section 525

In imposing a service-related prejudice requirement under Section 525, some lower courts have relied on legislative history indicating that the SSCRA was enacted primarily as a wartime measure and directed at the exigencies arising from military service. See, *e.g.*, *Bailey*, 488 P.2d at 728-729; *Zagorski*, 207 So. 2d at 65. For two reasons, however, reliance on the legislative history of the SSCRA is misplaced. First, as this Court has clearly stated, "[l]egislative history is irrelevant to the interpretation of an unambiguous statute." *Davis* v. *Michigan Dep't of the Treasury*, 489 U.S. 803, 808-809 n.3 (1989). Although "a court appropriately may refer to a statute's legislative history to resolve statutory ambiguity, there is no need to do so" where the statutory text "is not unclear." *Toibb* v. *Radloff*, 111 S. Ct. 2197, 2200 (1991); accord *Rou Pair Enter.*, 489 U.S. at 241 ("The language before us expresses Congress' intent * * * with sufficient precision so that reference to legislative history * * * is hardly necessary."). Because the language of Section 525, particularly when viewed in the context of the SSCRA as a whole, leaves no ambiguity in its omission of a prejudice requirement, there is no need to repair to the legislative history.

Second, that history in any event does not contradict the plain meaning of the statute. To be sure, the legislative history accompanying the 1918 enact-

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redemption. Even if a service member were required to show service-related hardship before invoking Section 525, a purchaser of real estate with a tax title in the chain of title would still face the possibility that there is an outstanding right of redemption that is not reflected in the records.



ment of the SSCRA indicates that "[i]nstead of a rigid suspension of all actions against a soldier, a restriction on suits is placed only where a court is satisfied that the absence of the defendant in military service has materially impaired his ability to meet that particular obligation." H.R. Rep. No. 181, 65th Cong., 1st Sess. 2 (1917). However, as we have shown, where Congress intended to give effect to that principle in the SSCRA, it did so expressly. See pp. 14-17, *supra*. So it is that most provisions of the SSCRA explicitly condition civil relief upon the existence of hardship arising from military service; but that is not so here. No such requirement was incorporated into the tolling provisions of the Act. See *Bickford*, 656 F.2d at 639-640.[19]

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[19] In addition, other portions of the legislative history of the 1918 statute confirm that the tolling provision now codified at 50 U.S.C. App. 525 reflects a deliberate departure from the general approach of the SSCRA. For example, while the legislative history generally contrasts the proposed legislation with the more rigid stay laws enacted by the States during the Civil War, see, *e.g.*, H.R. Rep. No. 181, *supra*, at 2, there is evidence that the tolling provision was specifically drafted to approximate the Civil War statutes. Thus, the government's memorandum transmitting the SSCRA to the Senate explained the tolling provision as follows:

> A provision to this effect is familiar in the war legislation of almost every American State at the time of the Civil War. The section here drafted seeks to express in the fewest possible words the various benefits which the old war legislation created in this regard.

*Memoranda on S. 2589 Before the Subcomm. of the Senate Comm. on the Judiciary*, 65th Cong., 1st Sess. 30 (1917); see H.R. Rep. No. 181, *supra*, at 6 (the tolling provision "provides the usual stay of the statute of limitation"). Consistent with that view, moreover, the House sponsor of the 1918 bill made clear that the SSCRA would "suspend entirely" the

The legislative history of the 1940 enactment also provides no basis for departing from the statutory language. As some courts have noted, see, *e.g.*, *Bailey*, 488 P.2d at 728; *Zagorski*, 207 So. 2d at 65, the legislative history surrounding the 1940 reenactment of the SSCRA reflects a primary purpose of addressing the urgent conditions that might arise if individuals were called to serve in the impending war. But "[i]t is not the law that a statute can have no effects which are not explicitly mentioned in its legislative history," *Pittston Coal Group, Inc.* v. *Sebben*, 488 U.S. 105, 115 (1988), and the plain terms of Section 525 contain no suggestion that available relief is conditioned upon the existence of hostilities. Indeed, Congress's indefinite extension of the SSCRA in 1948, see Selective Service Act of 1948, ch. 625, § 14, 62 Stat. 623-624, leaves no doubt that the Act encompasses more than merely the protection of service members called to fight during a war. Accordingly, nothing in the legislative history of the SSCRA is inconsistent with applying the Act's plain language.[20]

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statute of limitations "during [the service member's] period of service." 55 Cong. Rec. 7788 (1917) (Rep. Webb).

[20] The legislative history of the 1942 amendment extending Section 525 to periods of redemption similarly contains no suggestion of a prejudice requirement. See H.R. Rep. No. 2198, 77th Cong., 2d Sess. 3-4 (1942) ("The running of the statutory period during which real property may be redeemed after sale to enforce any obligation, tax, or assessment is likewise tolled during the part of such period [of military service] which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942."); S. Rep. No. 1558, 77th Cong., 2d Sess. 4 (1942) (same); see also 88 Cong. Rec. 5367 (1942) (Rep. Kilday) ("You take the period of redemption that exists in most cases for the property owner after tax foreclosure, for instance. We provide in this amendment that the period he is in the Army shall not count within the period of redemption, so that we place him whole while he is in the Army.").



* * * * *

In sum, we agree with the reasoning of the lower courts that have interpreted Section 525 according to its plain language and declined to engraft a prejudice requirement nowhere found in the text of that provision. See, *e.g.*, *Mason* v. *Texaco Inc.*, 862 F.2d 242, 244-245 (10th Cir. 1988); *Bickford* v. *United States*, 656 F.2d 636, 639 (Ct. Cl. 1981); *Ricard* v. *Birch*, 529 F.2d 214, 216-217 (4th Cir. 1975); *Ray* v. *Porter*, 464 F.2d 452, 454-456 (6th Cir. 1972); *Jones* v. *Garrett*, 386 P.2d 194, 200 (Kan. 1963);[21] see also *Illinois Nat'l Bank* v. *Gwinn*, 61 N.E.2d 249, 254 (Ill. 1945) ("It is evident that the provisions of [Section 525] * * * are self-executing, and that it was not the intention of Congress to make it discretionary with the court whether, under the facts of the particular case, an extension of time for redemption should be had."). As one court of appeals succinctly explained:

> There is not ambiguity in the language of § 525 and no justification for the court to depart from the plain meaning of its words. The statute draws no distinction between the many different categories of active duty personnel. When Congress intended to impose conditions on the applicability of other provisions in the SSCRA

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[21] Respondent would distinguish those cases as involving periods of limitation, rather than periods of redemption. Br. in Opp. 4-5. The text of Section 525, however, is certainly no less unconditional with respect to periods of redemption. Section 525 excludes "[t]he period of military service" from any period of limitation, and also excludes "any part of such period [of military service] which occurs after October 6, 1942," from "any period" of redemption.

> * * *, it did so in clear terms. Section 525, in marked contrast, in no way suggests that a serviceman must demonstrate that his military service has affected his ability to bring suit as a condition precedent to its applicability.

*Bickford*, 656 F.2d at 639-640.[22] Because of the clarity of the SSCRA's language, the state court's imposition of a prejudice requirement under Section 525 "is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted * * * may be included within its scope." *Iselin* v. *United States*, 270 U.S. 245, 251 (1926) (Brandeis, J.). "To supply omissions," however, "transcends the judicial function." *Ibid.* Because petitioner has remained in military service during the relevant period, Section 525, by its plain terms, has tolled petitioner's right to redeem his property in Danforth, Maine. The state court therefore erred in denying petitioner that right.

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[22] The Fourth Circuit, in an unpublished opinion, recently accepted the government's argument that Section 525 cannot be invoked without a showing of prejudice in an action to correct military records under 10 U.S.C. 1552. *Townsend* v. *Secretary of the Air Force*, 947 F.2d 942 (1991) (Table). We note that the present case does not present the question whether Section 525 applies when Congress enacts a statute of limitations that explicitly governs the right of a service member or former service member to file suit. Cf. *Mouradian* v. *John Hancock Cos.*, 930 F.2d 972, 973-975 (1st Cir. 1991) (per curiam) (applying the specific military service tolling provision in the NLRA's statute of limitations, 29 U.S.C. 160(b), rather than applying general provisions of Section 525), cert. denied, 112 S. Ct. 1514 (1992). We also note that this case does not raise the question whether a defense of laches is available even if Section 525 precludes application of the statute of limitations.



## CONCLUSION

The judgment of the Supreme Judicial Court of Maine should be reversed.

Respectfully submitted.

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